IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GAMES WORKSHOP LTD., a U.K. corporation, GAMES WORKSHOP AMERICA, INC. a Maryland corporation, Plaintiffs, v. MARK MONDRAGON d/b/a DREAMFORGE GAMES, a citizen of California, Defendant.	Civil Action No:_______

COMPLAINT FOR TRADE DRESS INFRINGEMENT,
COPYRIGHT INFRINGEMENT, AND UNFAIR COMPETITION

As their Complaint in this action, Plaintiffs Games Workshop Ltd. and Games Workshop America, Inc. (collectively "Games Workshop"), by their undersigned attorneys, allege as follows, upon actual knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters.

NATURE OF THE CASE

1. This is an action for trade dress infringement, unfair competition, and copyright infringement under federal law, and trade dress infringement and unfair competition under state and common law. Games Workshop brings this action because Defendant Mark Mondragon d/b/a Dreamforge Games has manufactured and sold gaming models that copy and infringe character models and artwork used in Games Workshop's WARHAMMER 40,000 game—one of the most well-known and popular futuristic, science-fiction-based table-top war games.

Defendant also offers its own game, which copies and infringes elements of the WARHAMMER 40,000 game and storyline. Fully aware of Games Workshop, its characters, and its WARHAMMER 40,000 game, Defendant has profited by knowingly trading upon Game Workshop's creativity and popularity, at the expense of Games Workshop, the public, and the table-top gaming community.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§1121 and 1125(a), and 28 U.S.C. §§1331, 1338(a), 1338(b), and 1367. Because the parties are citizens of different states, and the matters in controversy exceed the sum or value of $75,000, exclusive of interest and costs, this Court also has jurisdiction under 28 U.S.C. §1332. Pursuant to 28 U.S.C. §1367, this Court has supplemental jurisdiction over Games Workshop's state and common law claims because those claims are substantially related to Games Workshop's federal Lanham Act claims.

3. This court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c), because Plaintiff Games Workshop America, Inc. is headquartered in the District, Games Workshop is being harmed in this District, Defendant is soliciting business in this District.

THE PARTIES

4. Plaintiff Games Workshop Ltd. is a United Kingdom corporation with its principal place of business at Willow Road, Lenton, England, NG7 2WS. Games Workshop Ltd. owns the intellectual property rights at issue in this case.

5. Plaintiff Games Workshop America, Inc. is a wholly owned subsidiary, affiliate, and licensee of Plaintiff Games Workshop Ltd., and is a Maryland corporation with its principle

place of business at 6721 Baymeadow Drive, Glen Burnie, Maryland 21060-6401. Games Workshop America, Inc. distributes and sells the games and products at issue in this case in the United States.

6. Defendant Mark Mondragon is a California citizen who operates and transacts business from and through P.O. Box 83, Guernesville, California 95446 under the name "Dreamforge Games."

GAMES WORKSHOP AND ITS PRODUCTS

A General Overview of Games Workshop's Table-Top Games

7. Games Workshop creates, manufactures, and markets table-top war hobby games and related accessories (including miniature figures) throughout the United States and abroad. Games Workshop is one of the largest and most successful table-top war games companies in the world.

8. Games Workshop offers three main games (WARHAMMER, WARHAMMER 40,000, and, by license, THE LORD OF THE RINGS) and a number of specialty games.

9. Each of these games has its own elaborate theme and storyline and is governed by a detailed point structure and lengthy set of rules. Players control an armed force comprised of armies of miniature model warriors and/or machines from various fictional races/periods consistent with the game's theme. Players direct the movement, weaponry, and targets of each miniature and record damage sustained to, and points earned by, each miniature during battle in accordance with the game's point structure and detailed rules.

10. Every miniature used in Games Workshop's games, including model warriors, weapons, vehicles, and machines ("GW Miniatures"), represents a collection of highly detailed characteristics rated according to a systematic point scale. Point assignments reflect the

particular GW Miniature's proficiency at marksmanship, the distance it can move in a turn, the level of complexity of weaponry it can operate, its leadership abilities, and its relative strengths and weaknesses. Each GW Miniature's individual characteristics determine how effective it will be on the battlefield.

11. All the elements of Games Workshop's games, including (1) the history, characteristics, and orientation of the fictional setting; (2) the history, personality, tendencies, capabilities, weaknesses, characteristics, and weaponry of each fictional race; and (3) the functions, features, rules, and statistics for each category of war-gear and weaponry, are detailed in the game's rule books, created and marketed by Games Workshop for use with the games. These rule books contain original drawings and artwork of the characters depicted in various battle poses and scenes.

12. In addition to the GW Miniatures, Games Workshop offers a vast selection of game-related merchandise for players at all levels, including supplemental source books, video games, templates, and game cards.

13. Games Workshop promotes and sells its games and their numerous associated GW Miniatures, rule books, and other collateral items through a wide variety of retail trade channels, including through shops, catalogs, mail order, trade shows and gaming conventions, and the Games Workshop Internet website.

14. As a result of Games Workshop's creative efforts, its extensive customer assistance services, and its careful quality control over the unique appearance of its GW Miniatures, artwork, and every aspect of its WARHAMMER 40,000 and other games, Games Workshop's products are the benchmark of science fiction war games.

Games Workshop's WARHAMMER 40,000 Game and Titan Character

15. Games Workshop's WARHAMMER 40,000 game is a complex science-fiction war-strategy game set in the forty-first millennium featuring futuristic battles involving various races of human, mechanical, and alien warrior combatants in a fictional galaxy.

16. One of the WARHAMMER 40,000 game's subplots involves a race of "Titans"—immense mechanical humanoid warriors that stand up to 100 feet tall. Titans are divided into a number of types, depending on their size and function, and are controlled by a group of high-tech priests, all devotedly loyal to a harsh and uncompromising Emperor. In the game's storyline, the Emperor saved humanity by bringing order to a galaxy rife with chaos and warfare, and has reigned for ten thousand years—his armies conquering worlds and battling across the vastness of space in the defense of his empire in a pseudo-religious "Inquisition" designed to defend humanity from its various enemies.

17. The storyline and game rules surrounding Games Workshop's Titan characters are set forth in the rule book attached as Exhibit A. This book also includes detailed artwork depicting certain Titan characters and races.

18. Among its other miniatures, Games Workshop has produced and sold various Titans, including a "Warlord Titan," a photograph of which is attached as Exhibit D, and an "Imperator Titan," a photograph of which is attached as Exhibit E. Like its other miniatures, Games Workshop's Titan miniatures are designed carefully to depict accurately the appearance and characteristics of the Titan character as defined and illustrated in WARHAMMER 40,000's many guide and rule books, to conform fully with the games' carefully defined collection of characteristics and assigned point structure. A player's ability to evaluate and recognize each

miniature's characteristics with a quick visual review is a critical factor in successful point allocation, participation, and strategy of the WARHAMMER 40,000 game.

COPYRIGHTS IN THE GW MINIATURES AND ARTWORK

19. The depictions of the Titan characters in Games Workshop's artwork, rule books, and miniatures are original works created exclusively by Games Workshop and therefore are entitled to copyright protection under the Copyright Act of 1976 (17 U.S.C. §101 et seq.), as amended.

20. Games Workshop owns copyrights for the following GW Miniatures and artwork involved in this case, photographs and copies of which are attached as Exhibits B-E as indicated below:

GW Miniature / Artwork	Exhibit
Titan artwork showing hunchback design	B
Emperor Titan artwork with gothic balcony / face	C
Warlord Titan miniature	D
Imperator Titan miniature	E

21. Games Workshop also owns valuable copyrights in its WARHAMMER 40,000 Titan story line, memorialized in the rule book attached as Exhibit A.

22. Registrations for Games Workshop's works are not prerequisites to filing suit in this action because the works are not considered "United States works" under 17 U.S.C. §411, as defined in 17 U.S.C. §101. Nevertheless, Games Workshop has obtained copyright registrations for the above works, copies of which are attached at Exhibits F - H.

23. Games Workshop currently is, and at all relevant times has been, the sole proprietor of all rights, title, and interest in and to the copyrights identified above.

TRADE DRESS RIGHTS IN THE TITANS

24. Games Workshop owns trade dress rights in its Titans, embodied in its Titan miniatures and artwork referenced above and described below in Paragraph 29, which characters generally consist of gigantic war machines, measuring hundreds of meters tall, that: (1) contain thousands of warriors, (2) are humanoid in shape, (3) are considered to be holy by their operators, (4) have gothic elements, such as bipedal cathedrals, ramparts, banners, and (5) have an array of devastating weaponry. As a result of their inherent distinctiveness, and substantial use and promotion, Games Workshop's Titan characters serve as indicators to consumers that a particular gaming product is made and/or authorized by Games Workshop.

DEFENDANT'S WRONGFUL ACTS

25. Defendant manufactures and sells models for use with futuristic, science-fiction based, table-top war games, such as Games Workshop's WARHAMMER 40,000 game and Defendant's own game "Rusted Faith." Defendant sells its models on its website, located at www.dreamforge-games.com, and on the eBay auction website.

26. Defendant is no stranger to Games Workshop and its Titan products.

27. Defendant previously sold out-of-production Games Workshop Titan miniatures on eBay.

28. Defendant also previously created and sold through eBay its own models that infringed Games Workshop's intellectual property rights. In response to complaints from Games Workshop over Defendant's sale of those models, eBay pulled Defendant's auction of models that infringed Games Workshop's rights. Defendant also stopped selling those products, publicly noting that he did so for "legal" reasons.

29. In August 2004, Games Workshop discovered that Defendant had created and was selling through eBay two new models, specifically the "Leviathan Crusader" and "Leviathan Mortis" (collectively the "Leviathan Figures"). The Leviathan Figures copy many of the original and distinctive elements of certain Games Workshop Titan characters. Specifically, as depicted in the chart below, these models copy the following original and distinctive element of Games Workshop's Titan characters:

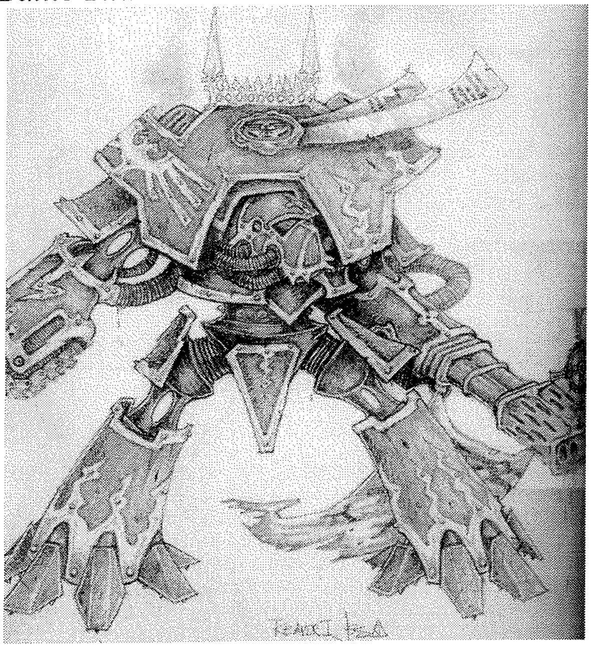
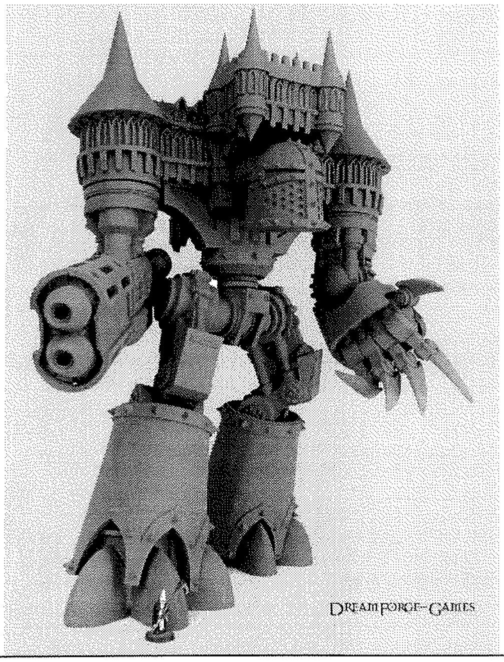
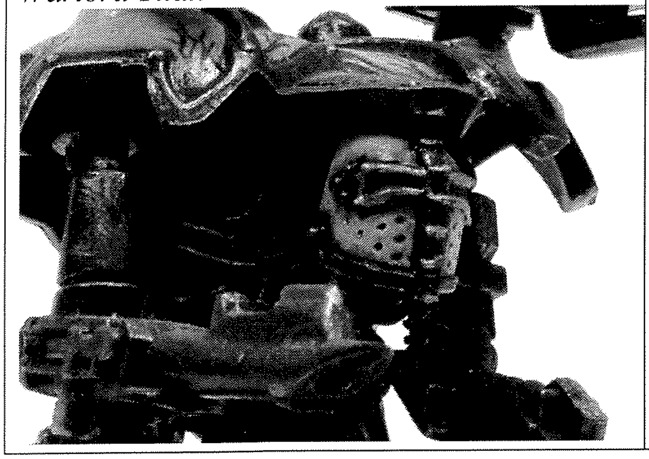
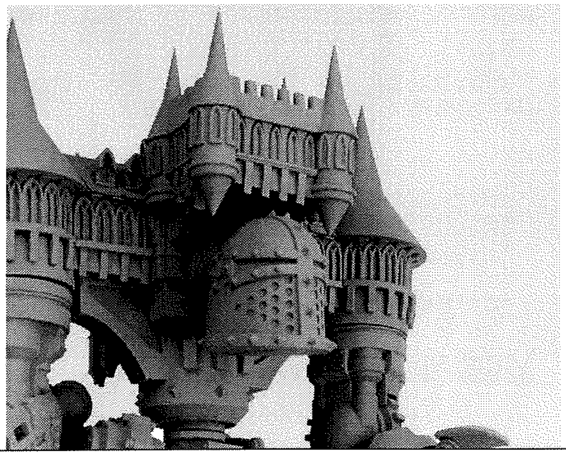
(a) Like Games Workshop's Battle Titan, Defendant's Leviathan Crusader is a large "hulking" mechanical humanoid with a hunch back and its head set well below its shoulders.

(b) Like certain of Games Workshop's Titans, such as its Battle Titan, Warload Titan, and Imperator Titan, Defendant's Leviathan Figures are replete with neo-gothic details and are based upon a similar pseudo-religious style.

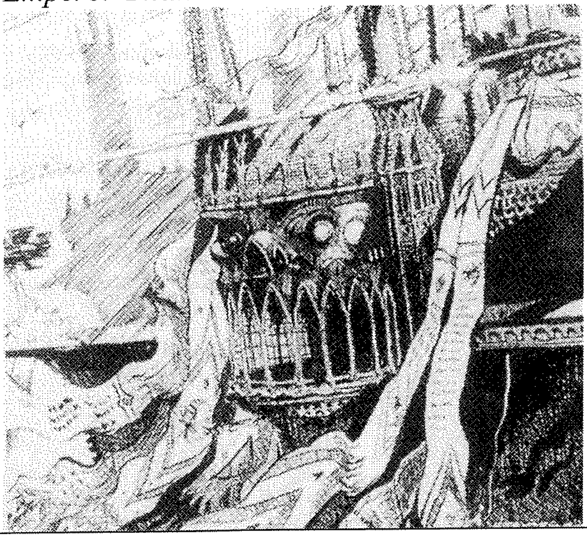
(c) Like Games Workshop's Warlord Titan, Defendant's Leviathan Crusader has a "cruciform" helmet.

(d) Like certain of Games Workshop's Titans, such as its Emperor Titan, Defendant's Leviathan Mortis has a gothic balcony as its face.

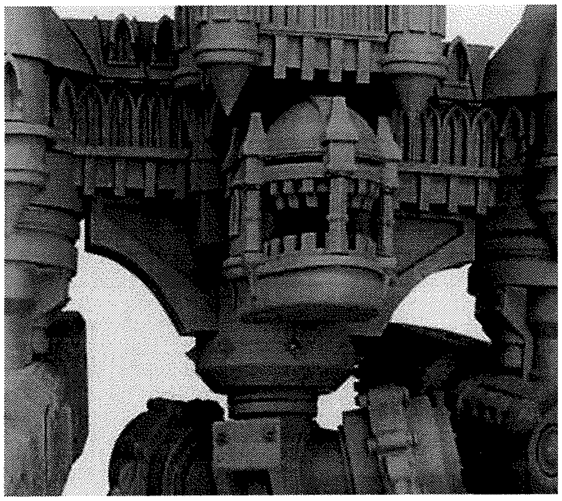
(e) Like Games Workshop's Imperator Titan, Defendant's Leviathan Figures are walking cathedrals, containing similar super structures, and featuring similar spires and buttresses.

Games Workshop's Artwork/Miniatures	**Defendant's Models**
Games Workshop's Battle Titan 	*Defendant's Leviathan Crusader* 
Games Workshop's Warlord Titan 	*Defendant's Leviathan Crusader* 

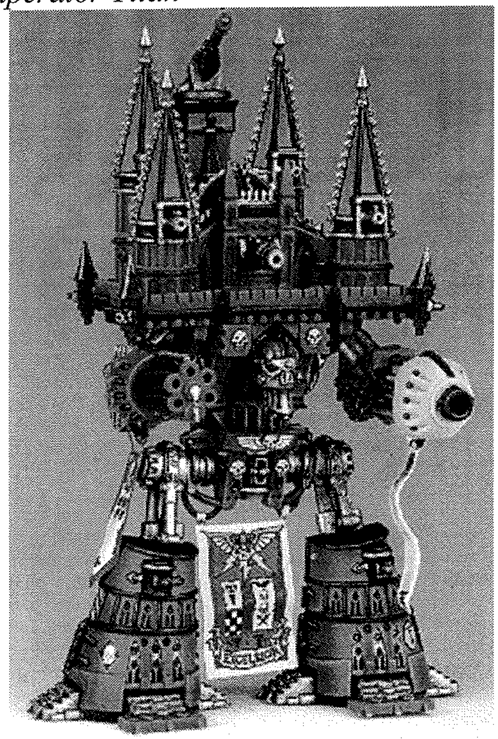
Games Workshop's
Emperor Titan



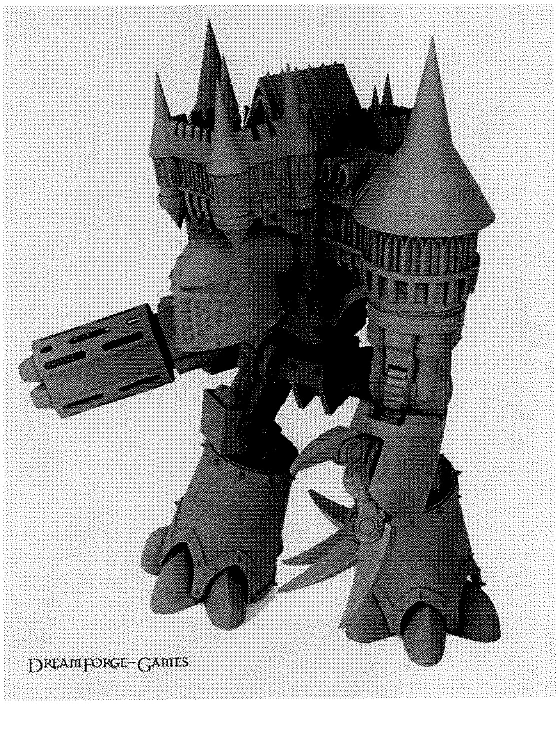
Defendant's
Leviathan Mortis

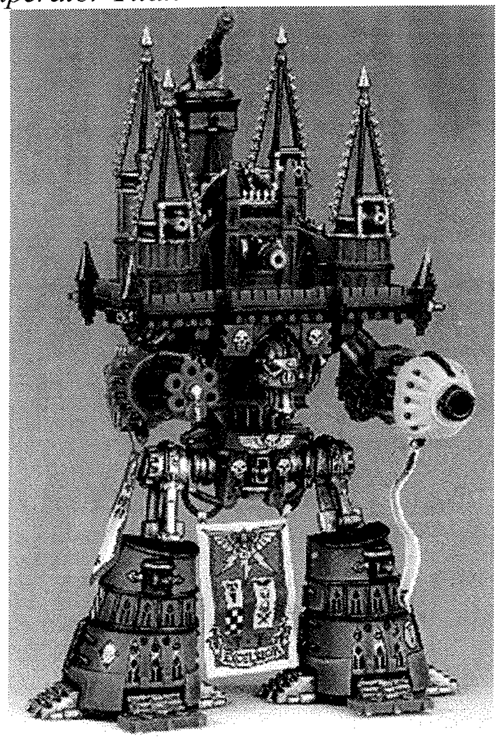
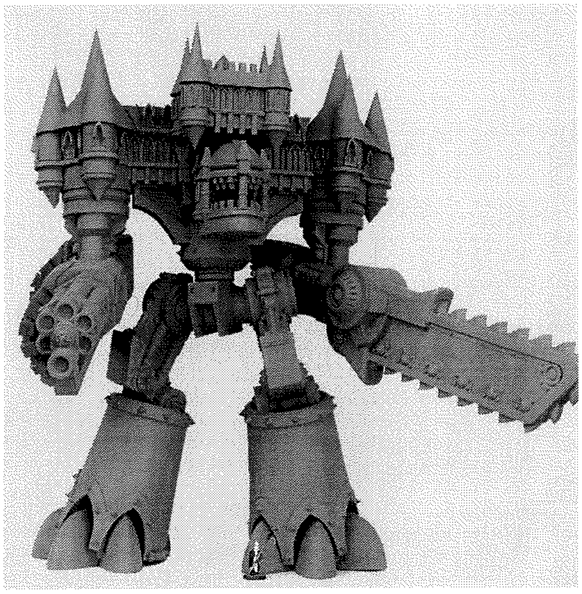


Games Workshop's
Imperator Titan



Defendant's
Leviathan Crusader



Games Workshop's Imperator Titan	*Defendant's Leviathan Mortis*
	

30. The striking and substantial similarities between Defendant's models and Games Workshop's Titan characters have been noted by multiple consumers/gamers.

31. Defendant himself refers to one of his models as a "Scratch built Titan."

32. In addition to copying Games Workshop's Titans themselves, Defendant copied the weaponry used with Games Workshop's Titans. Like Game Workshop's Titans, the Leviathan Figures can be equipped with arms consisting of (1) a multi barreled cannon with six barrels and two hexagonal bands over a support strut that angles to a mounting point under the center line, and/or (2) a large chainsaw.

33. In addition to copying Games Workshop's Titans and Titan weaponry, Defendant also copied elements of the WARHAMMER 40,000 game storyline in Defendant's RUSTED FAITH fantasy game. Some of the similarities are shown in the chart below:

Games Workshop's 40,000 Storyline	**Defendant's RUSTED FAITH Storyline** ***(Language Quoted from Defendant's Internet Website)***
In the Warhammer 40,000 universe, Reality and the Warp are separate dimensions that can be linked via Warp Gates, and other devices.	The setting is a universe that is post WWII, Germanys quest for the Holy Grail, led them to the discovery of an ancient artifact, a key that would open the gates between this world and the next. Through a terrible cascade of events, they were able to turn the tide of war and eventfully dominate the world and realize their dream for the new world order.
The Imperium of Man is a harsh quasi-fascist religious based state. After the Emperor was mortally wounded, the Ecclesiarchy became a dominant power in the Imperium.	Move forward several centuries, the full power of the key has been realized; The Third Reich has long since crumbled under its own corruption and a religious state has risen to fill the vacuum. The Brotherhood was formed as the protectorate of all mankind.
Warp travel allows faster then light travel, and allowed contact with alien races. Shortly afterwards, the first aliens wars began.	Late in the last century, it was found that with the use of this device, great distances could be transversed near instantaneously. The devise is replicated and the great expansion begins… Mankind is now exposed to races never before imagined; some are deemed "usable" others far more hostile.
Warp travel is not without it's dangers, is the entities that live in the Warp hunger for the souls of those that live in the 'real' worlds. There are areas of 'overlap' between the Warp and reality (Eg. 'The Eye of Terror', 'The Maelstrom', 'Warp Storms', etc). Warhammer 40,000 is a dark gothic background, where humanity is beset on all sides, fighting for its existence.	It is discovered that the use of this "key" does not come without a price, unperceivable at first, but over time the effects are disastrous, the fabric of space has grown weak, and the veil between this world and the next has become thin indeed! This is a dark universe on the edge of destruction; humanity fights for it's very existence.

34. Upon learning of Defendant's sale of its Leviathan Figures, Games Workshop wrote to eBay and requested that Defendant's models be removed from eBay's website under its Verified Rights Owner ("VeRO") program.

35. In accordance with its VeRO program, eBay responded by disabling Defendant's auctions.

36. Games Workshop requested that Defendant stop selling its infringing models. Defendant refused.

37. On November 23, 2004, Defendant submitted a "counter notice" with eBay denying that its products infringe Games Workshop's rights.

38. On December 15, 2004 eBay notified Games Workshop that it had received a "counter notice" from Defendant and that because eBay neither sees nor inspects any of the items offered for sale on its site, it cannot judge their authenticity or legality. As such, eBay advised Games Workshop that, under the terms of its VeRO program, if eBay did not receive notification that Games Workshop filed an action in federal district court by December 29, 2004, it would allow Defendant to repost the listings.

HARM TO THE PUBLIC AND GAMES WORKSHOP

39. Defendant's Leviathan Figures and RUSTED FAITH game storyline are so similar to Games Workshop's Titan characters and WARHAMMER 40,000 storyline that consumers and gamers will believe that Defendant's products are made, sponsored, approved, authorized, or licensed by, or otherwise in some way legitimately connected to, Games Workshop.

40. Any dissatisfaction with Defendant's look-alike Leviathan Figures, including dissatisfaction stemming from the imperfect compatibility of the Leviathan Figures with Games Workshop's WARHAMMER 40,000 game, will reflect adversely on Games Workshop and will injure the valuable goodwill and reputation that Games Workshop has long labored to establish in its game, miniatures, and game-related products.

41. Defendant has profited from the immediate market and commercial recognition of its substantially and confusingly similar Leviathan Figures and RUSTED FAITH game that

would not otherwise exist, gained unfairly by copying the creative elements of Games Workshop's copyrighted materials, including its Titan figures, artwork, and models, and WARHAMMER 40,000 storyline.

42. The natural, probable, and foreseeable result of Defendant's wrongful conduct has been and will continue to be to deprive Games Workshop of the benefits of selling its miniatures and other products, to deprive Games Workshop of its hard-earned goodwill, to confuse consumers and gamers, and to injure Games Workshop's relations with present and prospective customers and gamers.

43. Defendant acted intentionally and willfully in copying the distinctive elements of Games Workshop's Titan figures, artwork, and models, and its WARHAMMER 40,000 storyline.

44. Games Workshop has no adequate remedy at law, and is being irreparably harmed by Defendant's continued infringing and unlawful activities.

FIRST CLAIM FOR RELIEF
FALSE DESIGNATION OF ORIGIN/
TRADE DRESS INFRINGEMENT UNDER
SECTION 43(a)(1)(A) OF THE LANHAM ACT
15 U.S.C. §1125 (a)(1)(A)

45. Games Workshop repeats and realleges the allegations set forth in paragraphs 1 through 44.

46. Defendant's unauthorized use of models and a storyline similar to those of Games Workshop are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's goods and services, and thus constitute false designations of origin and trade dress infringement, in violation of Section 43(a)(1)(A) of the Trademark Act of 1946, as amended, 15 U.S.C. §1125(a)(1)(A).

SECOND CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT
17 U.S.C. §501 et seq.

47. Games Workshop repeats and realleges the allegations set forth in paragraphs 1 through 46.

48. By the actions alleged above, Defendant has infringed and will continue to infringe Games Workshop's copyrights in the Titan character, models, and artwork, and the WARHAMMER 40,000 storyline, in violation of the Copyright Act, 17 U.S.C. §501 et seq.

THIRD CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER MARYLAND STATE LAW
Md. Com. Law Code §§13-301 et seq.

49. Games Workshop repeats and realleges the allegations set forth in paragraph 1 through 48.

50. By the actions alleged above, Defendant represents that he has a sponsorship, approval, status, affiliation, or connection with Games Workshop, when he does not, in violation of Md. Com. Law Code §§13-301 et seq.

FOURTH CLAIM FOR RELIEF
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
UNDER COMMON LAW

51. Games Workshop repeats and realleges the allegations set forth in paragraphs 1 through 50.

52. Defendant's willful and deliberate acts constitute common-law trademark infringement, misappropriation of Games Workshop's goodwill in violation of the common law of the state of Maryland.

REQUESTED RELIEF

WHEREFORE, Games Workshop asks that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. An order declaring that Defendant's production, distribution, sale, and offer for sale of the Leviathan Figures and RUSTED FAITH storyline infringe Games Workshop's trade dress and copyrights, and constitute unfair competition, as detailed above.

B. A permanent injunction enjoining Defendant, his employees, agents, subsidiaries, distributors, dealers, and all persons in active concert or participation with any of them from:

(1) producing, distributing, selling, or offering for sale the Leviathan Figurines, or any similar products, and

(2) distributing its RUSTED FAITH game/storyline using the elements of Game Workshop's WARHAMMER 40,000 game/storyline, as detailed above.

C. Awarding Games Workshop monetary relief including damages in an amount not yet determined (but believed to be well in excess of $75,000), Defendant's profits (enhanced), the costs of this action, and/or treble damages, pursuant to 15 U.S.C. §1117 (a) and (b).

D. Awarding Games Workshop actual damages and Defendant's profits pursuant to 17 U.S.C. §504.

E. Awarding Games Workshop monetary relief for its attorneys' fees and non-taxable costs in this action pursuant to 15 U.S.C. §1117, 17 U.S.C. §505, and other applicable laws.

F. Awarding such other relief as this Court may deem appropriate.

Respectfully submitted,

Date: December 29, 2004

By: ______________________________

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